

***United States Court of Appeals  
for the Second Circuit***



**ADDENDUM**



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74-2180

UNITED STATES COURT OF APPEALS

for the

SECOND CIRCUIT

B

MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY,

Plaintiff,

v.

Docket No.  
74-2180

LAWRENCE E. SIMON, THIRD NATIONAL BANK OF  
HAMPDEN COUNTY, STERLING NATIONAL BANK &  
TRUST COMPANY OF NEW YORK, NATIONAL BANK OF  
NORTH AMERICA, DASHA AUERBACH STUART,  
Executrix under the Last Will and Testament  
of Josef Auerbach, IRVING GEIST, KENNETH  
DEMBSKI, ROYAL S. MARKS, SAMUEL HADDAD,  
NATALIE HADDAD, HENRY HECHT, SR., ALICE  
HECHT, MARY ELLEN HECHT AND HENRY HECHT, JR.,

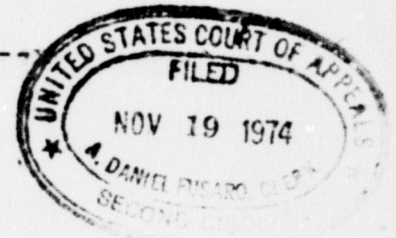
P/S

Defendants,

and

ROBERT B. SCHINDLER, As Trustee in Bankruptcy  
of Lawrence E. Simon, Bankrupt,

Intervenor-  
Appellant.



ADDENDUM OF INTERVENOR-APPELLANT

SHELDON LOWE  
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§ 9-103. Accounts, Contract Rights, General Intangibles,  
and Equipment Relating to Another Jurisdic-  
tion; and Incoming Goods Already Subject to  
a Security Interest

New York Uniform  
Commercial Code

(1) If the office where the assignor of accounts or contract rights keeps his records concerning them is in this state, the validity and perfection of a security interest therein and the possibility and effect of proper filing is governed by this Article; otherwise by the law (including the conflict of laws rules) of the jurisdiction where such office is located.

(2) If the chief place of business of a debtor is in this state, this Article governs the validity and perfection of a security interest and the possibility and effect of proper filing with regard to general intangibles or with regard to goods of a type which are normally used in more than one jurisdiction (such as

automotive equipment, rolling stock, airplanes, road building equipment, commercial harvesting equipment, construction machinery and the like) if such goods are classified as equipment or classified as inventory by reason of their being leased by the debtor to others. Otherwise, the law (including the conflict of laws rules) of the jurisdiction where such chief place of business is located shall govern. If the chief place of business is located in a jurisdiction which does not provide for perfection of the security interest by filing or recording in that jurisdiction, then the security interest may be perfected by filing in this state. For the purpose of determining the validity and perfection of a security interest in an airplane, the chief place of business of a debtor who is a foreign air carrier under the Federal Aviation Act of 1958,<sup>1</sup> as amended, is the designated office of the agent upon whom service of process may be made on behalf of the debtor.

(3) If personal property other than that governed by subsections (1) and (2) is already subject to a security interest when it is brought into this state, the validity of the security interest in this state is to be determined by the law (including the conflict of laws rules) of the jurisdiction where the property was when the security interest attached. However, if the parties to the transaction understood at the time that the security interest attached that the property would be kept in this state and it was brought into this state within 30 days after the security interest attached for purposes other than transportation through this state, then the validity of the security interest in this state is to be determined by the law of this state. If the security interest was already perfected under the law of the jurisdiction where the property was when the security interest attached and before being brought into this state, the security interest continues perfected in this state for four months and also thereafter if within the four month period it is perfected in this state. The security interest may also be perfected in this state after the expiration of the four month period; in such case perfection dates from the time of perfection in this state. If the security interest was not perfected under the law of the jurisdiction where the property was when the security interest attached and before being brought into this state, it may be perfected in this state; in such case perfection dates from the time of perfection in this state.

(4) Notwithstanding subsections (2) and (3), if personal property is covered by a certificate of title issued under a statute of this state or any other jurisdiction which requires indicia-



§ 9-103. Accounts, Claims, Rights, General Intangibles,  
and Equipment Relating to Another Jurisdiction;  
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(1) If the office where the assignor of accounts or contract rights keeps his records concerning them is in this state, the validity and perfection of a security interest therein and the possibility and effect of proper filing is governed by this Article; otherwise by the law (including the conflict of laws rules) of the jurisdiction where such office is located.

(2) If the chief place of business of a debtor is in this state, this Article governs the validity and perfection of a security interest and the possibility and effect of proper filing with regard to general intangibles or with regard to goods of a type which are normally used in more than one jurisdiction (such as

automotive equipment, rolling stock, airplanes, road building equipment, commercial harvesting equipment, construction machinery and the like) if such goods are classified as equipment or classified as inventory by reason of their being leased by the debtor to others. Otherwise, the law (including the conflict of laws rules) of the jurisdiction where such chief place of business is located shall govern. If the chief place of business is located in a jurisdiction which does not provide for perfection of the security interest by filing or recording in that jurisdiction, then the security interest may be perfected by filing in this state. For the purpose of determining the validity and perfection of a security interest in an airplane, the chief place of business of a debtor who is a foreign air carrier under the Federal Aviation Act of 1958,<sup>1</sup> as amended, is the designated office of the agent upon whom service of process may be made on behalf of the debtor.

(3) If personal property other than that governed by subsections (1) and (2) is already subject to a security interest when it is brought into this state, the validity of the security interest in this state is to be determined by the law (including the conflict of laws rules) of the jurisdiction where the property was when the security interest attached. However, if the parties to the transaction understood at the time that the security interest attached that the property would be kept in this state and it was brought into this state within 30 days after the security interest attached for purposes other than transportation through this state, then the validity of the security interest in this state is to be determined by the law of this state. If the security interest was already perfected under the law of the jurisdiction where the property was when the security interest attached and before being brought into this state, the security interest continues perfected in this state for four months and also thereafter if within the four month period it is perfected in this state. The security interest may also be perfected in this state after the expiration of the four month period; in such case perfection dates from the time of perfection in this state. If the security interest was not perfected under the law of the jurisdiction where the property was when the security interest attached and before being brought into this state, it may be perfected in this state; in such case perfection dates from the time of perfection in this state.

(4) Notwithstanding subsections (2) and (3), if personal property is covered by a certificate of title issued under a statute of this state or any other jurisdiction which requires indic-

tion on a certificate of title of any security interest in the property as a condition of perfection, then the perfection is governed by the law of the jurisdiction which issued the certificate.

(5) Notwithstanding subsection (1) and Section 9-302, if the office where the assignor of accounts or contract rights keeps his records concerning them is not located in a jurisdiction which is a part of the United States, its territories or possessions, and the accounts or contract rights are within the jurisdiction of this state or the transaction which creates the security interest otherwise bears an appropriate relation to this state, this Article governs the validity and perfection of the security interest and the security interest is perfected without filing and without notification to the account debtor when it has attached.

(6) The validity and perfection of a security interest in accounts, contract rights or general intangibles continues even though after the security interest has attached the office where the assignor of accounts or contract rights keeps his records concerning them or the chief place of business of the debtor is moved to some other jurisdiction. L.1962, c. 553; amended L.1963, c. 1003, §§ 25-27, eff. Sept. 27, 1964.

§ 9-106. "Definitions: 'Account'; 'Contract Right'; 'General Intangibles'"

"Account" means any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper. "Contract right" means any right to payment under a contract not yet earned by performance and not evidenced by an instrument or chattel paper. "General intangibles" means any personal property (including things in action) other than goods, accounts, contract rights, chattel paper, documents and instruments. All rights earned or unearned under a charter or other contract involving the use or hire of a vessel and all rights incident to the charter or contract are contract rights and neither accounts nor general intangibles. As amended L.1966, c. 416, § 3, eff. July 1, 1966.



## New York Uniform Commercial Code

### § 9-301. Persons Who Take Priority Over Unperfected Security Interests; "Lien Creditor"

(1) Except as otherwise provided in subsection (2), an unperfected security interest is subordinate to the rights of

- (a) persons entitled to priority under Section 9-312;
- (b) a person who becomes a lien creditor without knowledge of the security interest and before it is perfected;
- (c) in the case of goods, instruments, documents, and chattel paper, a person who is not a secured party and who is a transferee in bulk or other buyer not in ordinary course of business to the extent that he gives value and receives delivery of the collateral without knowledge of the security interest and before it is perfected;
- (d) in the case of accounts, contract rights, and general intangibles, a person who is not a secured party and who is a transferee to the extent that he gives value without knowledge of the security interest and before it is perfected.

(2) If the secured party files with respect to a purchase money security interest before or within ten days after the collateral comes into possession of the debtor, he takes priority over the rights of a transferee in bulk or of a lien creditor which arise between the time the security interest attaches and the time of filing.

(3) A "lien creditor" means a creditor who has acquired a lien on the property involved by attachment, levy or the like and includes an assignee for benefit of creditors from the time of assignment, and a trustee in bankruptcy from the date of the filing of the petition or a receiver in equity from the time of appointment. Unless all the creditors represented had knowledge of the security interest such a representative of creditors is a lien creditor without knowledge even though he personally has knowledge of the security interest. L.1962, c. 553, eff. Sept. 27, 1964.

§ 10-102. Laws Repealed; Provision for Transition

(1) Of the laws enumerated in the schedule hereto annexed following Section 10-105 of this Act and subject to the provisions of this Article, that portion specified in the last column is hereby repealed.

(2) Transactions validly entered into before the effective date specified in Section 10-105 of this Act and the rights, duties and interests flowing from them remain valid thereafter and may be terminated, completed, consummated or enforced as required or permitted by any statute or other law repealed or modified by this Act as though such repeal or modification had not occurred; provided, however, that the perfection of a security interest, as defined in this Act (Section 1-201) and however denominated in any law repealed or modified by this Act,

(a) which was perfected when this Act takes effect by a filing, re-filing or recording under a law repealed by this Act and requiring a further filing, re-filing or recording to continue its perfection, continues until and will lapse on the date provided by the law so repealed for such further filing, re-filing or recording;

(b) which was perfected when this Act takes effect by a filing, re-filing or recording under a law repealed by this Act and re-

quiring no further filing, re-filing or recording to continue its perfection, continues until and will lapse twelve months after the date this Act takes effect;

(c) which was perfected when this Act takes effect without any filing, re-filing or recording, and for the perfection of which the filing of a financing statement would be required if this Act applied, continues until and will lapse twelve months after this Act takes effect if the security interest is in accounts or, otherwise, thirty six months after this Act takes effect;

unless, in each case, a continuation statement is filed by the secured party before the perfection of the security interest would otherwise lapse. Any such continuation statement must be signed by the secured party, identify the security agreement, statement or notice, however denominated in any statute or other law repealed or modified by this Act, state the office where and the date when the last filing, re-filing or recording, if any, was made with respect thereto, and the filing number, if any, or book and page, if any, of recording; and further state that the security agreement, statement or notice, however, denominated in any statute or other law repealed or modified by this Act, is still effective. Section 9-401(1) determines the proper place to file such a continuation statement. Except as specified in this subsection and except that the perfection of the security interest will lapse five years after the filing of a continuation statement in accordance with this subsection unless another continuation statement is filed within six months prior to such lapse, the provisions of Section 9-403(3) apply to such a continuation statement.

(3) Notwithstanding subsection (2):

(a) The perfection of a security interest, however denominated in any law repealed by this Act, which was perfected when this Act takes effect by a filing, re-filing or recording under a law repealed by this Act, and for the perfection of which, if this Act applied, no filing of a financing statement would be required, continues under this Act.

(b) A security interest, however denominated in any law repealed by this Act, which was not perfected when this Act takes effect but which could have been perfected before this Act takes effect by a filing, re-filing or recording under a law repealed by this Act, and which, if this Act applied, could be perfected by the filing of a financing statement under this Act, may be perfected by the filing of a financing statement in accordance with this Act.

(c) A security interest, however denominated in any law repealed or modified by this Act, which was not perfected when this Act takes effect but which could have been perfected before this Act takes effect by the secured party's taking possession of the collateral under a law repealed or modified by this Act, and which, if this Act applied, could be perfected by the secured party's taking possession of the collateral, may be perfected by the secured party's taking possession of the collateral in accordance with this Act.

(d) A continuation statement heretofore filed in accordance with subsection (2) except for having been filed more than twelve months before the perfection of the security interest would otherwise lapse shall be deemed to have been filed in accordance with subsection (2).

(e) A security interest which was perfected when this Act took effect and the perfection of which was or is continued by the filing of a continuation statement in accordance with subsection (2) is a perfected security interest for the purposes of subsection (2) of Section 9-302.



(f) After September first, nineteen hundred sixty five, no further action shall be made in accordance with any statute repealed by this Act with respect to a security interest perfected when this Act takes effect, except that a certificate of payment or other satisfaction or discharge of a conditional sale contract or a certificate of payment or satisfaction of a chattel mortgage may be filed in accordance with section seventy-two of the personal property law or section two hundred thirty-eight of the den law, respectively, both repealed by this Act. As amended L.1965, c. 808, § 1, eff. July 16, 1965.

§ 10-101. Application of Act

This Act applies to transactions entered into and events occurring on and after the effective date specified in Section 10-105 of this Act. L.1962, c. 553, eff. Sept. 27, 1964.

§ 10-105. Effective Date

This Act shall take effect September twenty-seventh, nineteen hundred sixty-four. L.1962, c. 553, eff. Sept. 27, 1964.

§ 5201. Debt or property subject to enforcement; proper garnishee

Civil Practice  
Law and Rules

(a) Debt against which a money judgment may be enforced. A money judgment may be enforced against any debt, which is past due or which is yet to become due, certainly or upon demand of the judgment debtor, whether it was incurred within or without the state, to or from a resident or non-resident, unless it is exempt from application to the satisfaction of the judgment. A debt may consist of a cause of action which could be assigned or transferred accruing within or without the state.

(b) Property against which a money judgment may be enforced. A money judgment may be enforced against any property which could be assigned or transferred, whether it consists of a present or future right or interest and whether or not it is vested, unless it is exempt from application to the satisfaction of the judgment. A money judgment entered upon a joint liability of two or more persons may be enforced against individual property of those persons summoned and joint property of such persons with any other persons against whom the judgment is entered.

(c) Proper garnishee for particular property or debt.

1. Where property consists of a right or share in the stock of an association or corporation, or interests or profits therein, for which a certificate of stock or other negotiable instrument is not outstanding, the corporation, or the presi-

dent or treasurer of the association on behalf of the association, shall be the garnishee.

2. Where property consists of a right or interest to or in a decedent's estate or any other property or fund held or controlled by a fiduciary, the executor or trustee under the will, administrator or other fiduciary shall be the garnishee.

3. Where property consists of an interest in a partnership, any partner other than the judgment debtor, on behalf of the partnership, shall be the garnishee.

4. Where property or a debt is evidenced by a negotiable instrument for the payment of money, a negotiable document of title or a certificate of stock of an association or corporation, the instrument, document or certificate shall be treated as property capable of delivery and the person holding it shall be the garnishee.



(4) Every transfer of partnership property and every partnership obligation incurred within one year prior to the filing of a petition initiating a proceeding under this title by or against the partnership, when the partnership is insolvent or will be thereby rendered insolvent, is fraudulent as to partnership creditors existing at the time of such transfer or obligation, without regard to actual intent if made or incurred (a) to a partner, whether with or without a promise by him to pay partnership debts, or (b) to a person not a partner without fair consideration to the partnership as distinguished from consideration to the individual partners.

(5) For the purposes of this subdivision, a transfer shall be deemed to have been made at the time when it became so far perfected that no bona fide purchaser from the debtor could thereafter have acquired any rights in the property so transferred superior to the rights of the transferee therein, but, if such transfer is not so perfected prior to the filing of the petition initiating a proceeding under this title, it shall be deemed to have been made immediately before the filing of such petition.

(6) A transfer made or an obligation incurred by a debtor adjudged a bankrupt under this title, which is fraudulent under this subdivision against creditors of such debtor having claims provable under this title, shall be null and void against the trustee, except as to a bona fide purchaser, lienor, or obligee for a present fair equivalent value: *Provided, however,* That the court may, on due notice, order such transfer or obligation to be preserved for the benefit of the estate and, in such event, the trustee shall succeed to and may enforce the rights of such transferee or obligee: *And provided further,* That such purchaser, lienor, or obligee, who without actual fraudulent intent has given a consideration less than fair, as defined in this subdivision, for such transfer, lien, or obligation, may retain the property, lien, or obligation as security for repayment.

(7) Nothing contained in this subdivision shall be construed to validate a transfer which is voidable under section 96 of this title.

(a) The trustee of the estate of a bankrupt and his successor or successors, if any, upon his or their appointment and qualification, shall in turn be vested by operation of law with the title of the bankrupt as of the date of the filing of the petition initiating a proceeding under this title, except insofar as it is to property which is held to be exempt, to all of the following kinds of property wherever located (1) documents relating to his property; (2) interests in patents, patent rights, copyrights, and trade-marks, and in applications therefor: *Provided*, That in case the trustee, within thirty days after appointment and qualification, does not notify the applicant for a patent, copyright, or trade-mark of his election to prosecute the application to allowance or rejection, the bankrupt may apply to the court for an order revesting him with the title thereto, which peti-

tion shall be granted unless for cause shown by the trustee the court grants further time to the trustee for making such election; and such applicant may, in any event, at any time petition the court to be revested with such title in case the trustee shall fail to prosecute such application with reasonable diligence; and the court, upon re-vesting the bankrupt with such title, shall direct the trustee to execute proper instruments of transfer to make the same effective in law and upon the records; (3) powers which he might have exercised for his own benefit, but not those which he might have exercised solely for some other person; (4) property transferred by him in fraud of his creditors; (5) property, including rights of action, which prior to the filing of the petition he could by any means have transferred or which might have been levied upon and sold under judicial process against him, or otherwise seized, impounded, or sequestered: *Provided*, That rights of action *ex delicto* for libel, slander, injuries to the person of the bankrupt or of a relative, whether or not resulting in death, seduction, and criminal conversation shall not vest in the trustee unless by the law of the State such rights of action are subject to attachment, execution, garnishment, sequestration, or other judicial process: *And provided further*, That when any bankrupt, who is a natural person, shall have any insurance policy which has a cash surrender value payable to himself, his estate, or personal representatives, he may, within thirty days after the cash surrender value has been ascertained and stated to the trustee by the company issuing the same, pay or secure to the trustee the sum so ascertained and stated, and continue to hold, own, and carry such policy free from the claims of the creditors participating in the distribution of his estate under the bankruptcy proceedings, otherwise the policy shall pass to the trustee as assets; (6) rights of action arising upon contracts, or usury, or the unlawful taking or detention of or injury to his property; (7) contingent remainders, executory devises and limitations, rights of entry for condition broken, rights or possibilities of reverter, and like interests in real property, which were nonassignable prior to bankruptcy and which, within six months thereafter, become assignable interests or estates or give rise to powers in the bankrupt to acquire assignable interests or estates; and (8) property held by an assignee for the benefit of creditors appointed under an assignment which constituted an act of bankruptcy, which property shall, for the purposes of this title, be deemed to be held by the assignee as the agent of the bankrupt and shall be subject to the summary jurisdiction of the court.

All property, wherever located, except insofar as it is property which is held to be exempt, which vests in the bankrupt within six months after bankruptcy by bequest, devise or inheritance shall vest in the trustee and his successor or successors, if any, upon his or their appointment and qualification, as of the date when it vested in



the bankrupt, and shall be free and discharged from any transfer made or suffered by the bankrupt after bankruptcy.

All property, wherever located, except insofar as it is property which is held to be exempt, in which the bankrupt has at the date of bankruptcy an estate or interest by the entirety and which within six months after bankruptcy becomes transferable in whole or in part solely by the bankrupt shall, to the extent it becomes so transferable, vest in the trustee and his successor or successors, if any, upon his or their appointment and qualification, as of the date of bankruptcy.

The title of the trustee shall not be affected by the prior possession of a receiver or other officer of any court.

(c) The trustee may have the benefit of all defenses available to the bankrupt as against third persons, including statutes of limitation, statutes of frauds, usury, and other personal defenses; and a waiver of any such defense by the bankrupt after bankruptcy shall not bind the trustee. The trustee, as to all property, whether or not coming into possession or control of the court, upon which a creditor of the bankrupt could have obtained a lien by legal or equitable proceedings at the date of bankruptcy, shall be deemed vested as of such date with all the rights, remedies, and powers of a creditor then holding a lien thereon by such proceedings, whether or not such a creditor actually exists.

(c) (1) A transfer made or suffered or obligation incurred by a debtor adjudged a bankrupt under this title which, under any Federal or State law applicable thereto, is fraudulent as against or voidable for any other reason by any creditor of the debtor, having a claim provable under this title, shall be null and void as against the trustee of such debtor.

(2) All property of the debtor affected by any such transfer shall be and remain a part of his assets and estate, discharged and released from such transfer and shall pass to, and every such transfer or obligation shall be avoided by, the trustee for the benefit of the estate: *Provided, however,* That the court may on due notice order such transfer or obligation to be preserved for the benefit of the estate and in such event the trustee shall succeed to and may enforce the rights of such transferee or obligee. The trustee shall reclaim and recover such property or collect its value from and avoid such transfer or obligation against whoever may hold or have received it, except a person as to whom the transfer or obligation specified in paragraph (1) of this subdivision is valid under applicable Federal or State laws.

(3) For the purpose of such recovery or of the avoidance of such transfer or obligation, where plenary proceedings are necessary, any State court which would have had jurisdiction if bankruptcy had not intervened and any court of bankruptcy shall have concurrent jurisdiction.

## New York Debtor and Creditor Law

### § 270. Definition of terms

In this article "assets" of a debtor means property not exempt from liability for his debts. To the extent that any property is liable for any debts of the debtor, such property shall be included in his assets.

"Conveyance" includes every payment of money, assignment, release, transfer, lease, mortgage or pledge of tangible or intangible property, and also the creation of any lien or incumbrance.

"Creditor" is a person having any claim, whether matured or unmatured, liquidated or unliquidated, absolute, fixed or contingent.

"Debt" includes any legal liability, whether matured or unmatured, liquidated or unliquidated, absolute, fixed or contingent. Added L.1925, c. 254, § 1, eff. April 1, 1925.

### § 271. Insolvency

1. A person is insolvent when the present fair salable value of his assets is less than the amount that will be required to pay his probable liability on his existing debts as they become absolute and matured.

2. In determining whether a partnership is insolvent there shall be added to the partnership property the present fair salable value of the separate assets of each general partner in excess of the amount probably sufficient to meet the claims of his separate creditors, and also the amount of any unpaid subscription to the partnership of each limited partner, provided the present fair salable value of the assets of such limited partner is probably sufficient to pay his debts, including such unpaid subscription. Added L.1925, c. 254, § 1, eff. April 1, 1925.

### § 272. Fair consideration

Fair consideration is given for property, or obligation,

a. When in exchange for such property, or obligation, as a fair equivalent therefor, and in good faith, property is conveyed or an antecedent debt is satisfied, or

b. When such property, or obligation is received in good faith to secure a present advance or antecedent debt in amount not disproportionately small as compared with the value of the property, or obligation obtained. Added L.1925, c. 254, § 1, eff. April 1, 1925.

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§ 273. Conveyances by insolvent

Every conveyance made and every obligation incurred by a person who is or will be thereby rendered insolvent is fraudulent as to creditors without regard to his actual intent if the conveyance is made or the obligation is incurred without a fair consideration. Added L.1925, c. 254, § 1, eff. April 1, 1925.

§ 274. Conveyances by persons in business

Every conveyance made without fair consideration when the person making it is engaged or is about to engage in a business or transaction for which the property remaining in his hands after the conveyance is an unreasonably small capital, is fraudulent as to creditors and as to other persons who become creditors during the continuance of such business or transaction without regard to his actual intent. Added L.1925, c. 254, § 1, eff. April 1, 1925.

§ 275. Conveyances by a person about to incur debts

Every conveyance made and every obligation incurred without fair consideration when the person making the conveyance or entering into the obligation intends or believes that he will incur debts beyond his ability to pay as they mature, is fraudulent as to both present and future creditors. Added L.1925, c. 254, § 1, eff. April 1, 1925.

§ 276. Conveyance made with intent to defraud

Every conveyance made and every obligation incurred with actual intent, as distinguished from intent presumed in law, to hinder, delay, or defraud either present or future creditors, is fraudulent as to both present and future creditors. Added L.1925, c. 254, § 1, eff. April 1, 1925.

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